



Office of the Washington State Auditor
Pat McCarthy

Compliance Audit Report

Reviewing Investigations of Police Use of Deadly Force

Spokane Independent Investigative Response Team – The Shawn McCoy Case

**Use of Deadly Force Incident on January 5, 2021, by the Spokane Police
Department**

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Office of the Washington State Auditor

Pat McCarthy

October 24, 2024

Lt. Jerad Kiehn
Spokane Independent Investigative Response Team

Report on Use of Deadly Force Investigation Audit

Attached is the official report on our audit of the investigation into the use of deadly force on January 5, 2021, that resulted in the death of Shawn McCoy.

The audit assessed the Spokane Police Department's and the Spokane Independent Investigative Response Team's compliance with state laws and rules regarding independent investigations of police use of deadly force as defined in WAC 139-12-030.

Our independent audits provide essential accountability and transparency regarding police use of deadly force investigations. These audits are valuable to the Legislature, law enforcement agencies and the public in assessing police accountability efforts.

If you are a member of the media and have questions about this report, please contact Director of Communications Kathleen Cooper at (564) 999-0800. Otherwise, please contact Use of Deadly Force Investigations Program Manager Michael Huynh at (564) 999-0831.

Pat McCarthy, State Auditor

Olympia, WA

cc: Monica Alexander, Executive Director, Criminal Justice Training Commission
Steve Strachan, Executive Director, Washington Association of Sheriffs and Police Chiefs
Hannah Fauchald, Assistant State Auditor

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EXECUTIVE SUMMARY

Results in Brief

Spokane Independent Investigative Response Team (SIIRT) investigators and officers involved in the use of force incident complied with many requirements to ensure the investigation into Shawn McCoy's death was independent, transparent, credible, and communicated to the public timely, as state laws and rules require. These actions included, but were not limited to, securing the scene of the shooting, updating the family on significant developments throughout the investigation, and issuing a public update during each week of the investigation.

The audit found instances where SIIRT did not follow state regulations, as well as opportunities to improve its documentation to demonstrate compliance. Specifically, we found SIIRT did not:

- Include questions in its conflict of interest assessments related to bias
- Provide community representatives and McCoy's family with advance notice of all press releases
- Require community representatives to complete conflict of interest assessments
- Maintain documentation demonstrating the community representatives reviewed investigators' conflict of interest assessments, and were given the opportunity to review the completed investigation file

Additionally, we found the Spokane Police Department did not:

- Separate the involved officers at the scene after the shooting
- Maintain documentation indicating supervisors directed involved and witness officers to not speak about the shooting until they provided statements to SIIRT

Recommendations

We recommend SIIRT:

- Ensure investigators and community representatives complete conflict of interest assessments that include questions related to potential biases and social and work conflicts with the involved officer
- Provide the community representatives and the family of the person who was injured or killed with advance notice of all press releases as required, and maintain documentation to demonstrate that it did so

We also recommend SIIRT's member agencies separate involved officers, give administrative orders to involved and witness officers to not speak about the case before providing statements to SIIRT, and maintain documentation that they did so.

BACKGROUND

Use of Deadly Force Incident

The following summary of events is based on the investigation's case files:

On January 5, 2021, Spokane Police Department officers were searching for Shawn McCoy to arrest him on murder charges. Officers believed McCoy was preparing for a shootout with police, and he was likely armed.

Officers found McCoy's car parked outside of a triplex, but they did not know where he was, so they waited and watched his car. At about 8 p.m., a man matching McCoy's description came out of a home and drove away in his car.

Several undercover officers followed the car, and one identified McCoy as the driver. About 30 minutes later, officers put down spike strips ahead of McCoy's car, but he drove around them. Officers surrounded McCoy's car, and trailing officers turned on their emergency lights and sirens to make a traffic stop. McCoy tried to flee but crashed into one of the officer's cars. Another officer used his car to hit the side of McCoy's car to stop it, which caused McCoy to lose control, drive onto a sidewalk and hit a fence before stopping. An officer drove into the passenger side of McCoy's car to block it in, and to prevent him from trying to escape through the passenger door. Multiple officers got out of their cars and yelled for McCoy to put his hands up. McCoy opened his door and fired one shot at the officers. In response, Sgt. Brent Austin, Cpl. Anthony Guzzo, and officers Kyle Heuett, Winston Brooks, Brandon Lynch and Brandon Fabian, fired 29 shots at McCoy, hitting him seven times. McCoy was shot in his torso, right shoulder and right leg.

McCoy's feet were outside the car door and his gun was on the ground, but officers could not see his upper body. Officers yelled at McCoy to crawl out of the car, but he did not respond. They used an armored truck to get close to McCoy, and then had a K9 pull him out of the car. Officers handcuffed McCoy and provided first aid. Paramedics arrived and took over aid, but they declared McCoy dead at the scene.

The Spokane Independent Investigative Response Team (SIIRT), an independent investigation team (IIT) that investigates police use of deadly force incidents in Spokane County, responded to the shooting. Investigators with the Spokane County Sheriff's Office led the investigation with assistance from the Washington State Patrol.

On June 1, 2021, SIIRT submitted its investigation to the Spokane County Prosecuting Attorney's Office. The prosecutor reviewed the case and wrote in a memo on August 6, 2021, that he would not file charges against the involved officers.

Independent Investigation Teams

Voters approved Initiative 940 in 2018. It ensures that one of an IIT's key functions is to investigate police use of deadly force incidents. The initiative requires investigations of police use of deadly force be conducted by an agency completely independent of the one with the involved officer(s). Regional IITs allow law enforcement agencies to respond quickly to use of deadly force incidents while keeping the involved agency out of the investigation. IITs are made up of command staff, detectives and other crime scene investigators from law enforcement agencies in a given region. An IIT also consists of volunteers, called non-law enforcement community representatives, who help give the community perspective during an investigation.

Washington has 17 IITs throughout the state. Many of these teams existed before recent police reform and accountability laws, including Initiative 940, and allowed law enforcement agencies to pool resources for major investigations. Prohibiting the involved agency from participating in these investigations was meant to improve their impartiality and independence by preventing people who are more likely to have a personal relationship with the involved officers from investigating the incident.

The initiative tasked the Washington State Criminal Justice Commission (CJTC) with adopting rules to govern these investigations. The CJTC adopted Washington Administrative Code (WAC) 139-12-030, which requires independent use of deadly force investigations to meet four key principles:

- Independence – the involved agency cannot have undue influence or the appearance of undue influence on the investigation.
- Transparency – community members are able to assess whether the investigation is conducted in a trustworthy manner and complies with the standards defined in state laws and rules.
- Communication – the IIT must communicate the investigation's progress to the public and family of the person killed or harmed by police use of deadly force.
- Credibility – use of deadly force investigations follow best practices for criminal investigations, and investigators meet necessary training requirements and demonstrate ethical behavior and impartiality.

Audit Objective

State law (RCW 43.101.460) requires the Office of the Washington State Auditor to audit all investigations into police use of deadly force resulting in death, substantial bodily harm or great bodily harm.

To determine whether the Spokane Police Department and SIIRT complied with state laws and rules in the investigation of the death of Shawn McCoy, we reviewed investigative files related to the case, reviewed training records held by the CJTC and member police agencies, and interviewed IIT members, including a community representative. We assessed the involved agencies' and IIT's compliance with each of the requirements under the key principles in WAC 139-12-030. This included whether the IIT followed the CJTC's published best practices for conducting homicide investigations.

This report outlines the steps the investigation team took to meet each of these key principles. **Appendix A** contains information about our methodology.

AUDIT RESULTS

Appendix A outlines our Office's authority and methodology for this audit. In short, state law (RCW 43.101.460) requires the Office of the Washington State Auditor to audit all investigations into police use of deadly force resulting in death, substantial bodily harm or great bodily harm. Our charge is to assess whether the investigations complied with relevant rules and laws. The audit only reviewed the investigation. It did not assess the incident itself or whether the use of force was justified.

Independence

To help ensure the investigation was conducted independently of the involved agency, SIIRT investigators assumed control of the scene upon arrival and excluded investigators from the Spokane Police Department. The shooting occurred at about 8:30 p.m. We reviewed investigative reports and found a lieutenant with the Spokane Police Department requested SIIRT's response within 20 minutes of the shooting. At about 9:45 p.m., SIIRT investigators began to arrive at the scene and were briefed by members of the Spokane Police Department. A SIIRT commander wrote in his report they took control of the scene at 10:30 p.m.

We did not find evidence that any SIIRT member shared investigative information with the Spokane Police Department, or that any member of the Department took part in the investigation.

Transparency

SIIRT assigned two community representatives to the investigation and involved them in most of the required investigative processes. WAC 139-12-030 requires IITs to include at least two community representatives in each investigation. Community representatives are volunteers, not law enforcement agency employees, who provide community perspective on key processes in use of deadly force investigations. They must complete a confidentiality agreement, be present at any briefings with the involved agency, and have access to the completed investigation file.

SIIRT assigned two community representatives to the investigation on the night of the shooting. The representatives met with the commander and signed confidentiality agreements one week later.

SIIRT held one briefing with the Spokane Police Department during the investigation. The commander invited the community representatives to attend, and they both did.

We were unable to determine if the community representatives were told they could access the completed case file. The commander said SIIRT tells community representatives they can request to review the case file after it is submitted to the prosecutor. We spoke with one of the community representatives, and he said he is currently aware they can request to access the case file, but he could not recall if that was told to him during this investigation. The other community representative did not respond to our request for an interview. SIIRT updated its confidentiality agreement in 2023 to include language that informs the representatives they can request the completed case file.

Communication

SIIRT followed most of the communication requirements in the WAC. The WAC requires the involved agency or IIT notify the family of the person who was killed or injured by the use of force and update them on significant developments. The IIT must also post weekly public updates on the investigation's progress, even if there is no new information to report. Community representatives and the family must receive advance notice of these press releases.

On the night of the shooting, SIIRT assigned a family liaison who notified McCoy's family of his death. The liaison updated the family on significant developments throughout the investigation. SIIRT also issued a public update during each week of the 22-week investigation.

SIIRT provided the community representatives and the family with advance notice of public updates for some weeks of the investigation. We found that SIIRT did not notify them one week when the commander was out of office, and in two other weeks, they sent notification after the updates were published. SIIRT did not maintain documentation that it notified the community representatives and the family of updates for three additional weeks.

The Spokane Police Department and SIIRT did not provide criminal background information about McCoy to the media. The WAC prohibits IITs and involved agencies from providing to the media criminal background information about the person who was killed or injured by police use of deadly force. We reviewed each press release, online news articles, and the social media profiles of the Spokane Police Department and the Spokane County Sheriff's Office, and did not find any indication that either the involved agency or SIIRT provided criminal background information to the media.

Credibility

Crime Scene Investigation

The involved agency secured the scene of the shooting. The officers put up crime scene tape, guarded the scene's perimeter, and maintained an entry and exit log to the scene.

Investigators located and preserved evidence from the shooting. Investigators photographed the scene and mapped it with a scanner. They collected evidence, including McCoy's gun and 30 shell casings. Investigators also photographed involved and witness officers at the Spokane police station, and counted the remaining rounds of ammunition in their firearms. The team collected body-worn camera footage from 28 Spokane Police officers.

The day after the shooting, investigators collected five bullets the medical examiner found in McCoy's body.

Interviewing Involved Officers and Witnesses

The involved officers were removed from the scene of the shooting, but they were not separated from each other while they waited to be transported from the scene. We were unable to determine if any of the involved or witness officers discussed the case with each other before they provided statements to SIIRT investigators. The CJTC's best practices require involved officers to be separated and removed from the scene, and they prohibit involved and witness officers from discussing the case with any other witnesses until they provide statements to SIIRT.

After the shooting, a supervisor told the involved officers to remove themselves from the scene of the shooting and to wait in the same area. The officers waited together until they were transported to the station. At the station, the officers stayed in separate rooms and waited with their peer support officer until SIIRT contacted them.

The case file did not include documentation showing witness officers were kept separated or that Spokane Police supervisors gave administrative orders to involved and witness officers not to discuss the shooting.

SIIRT obtained statements from involved officers and witnesses. After the shooting, Spokane Police officers canvassed the area for injured people and witnesses. Officers recorded interviews with witnesses on their body-worn cameras, and SIIRT's lead investigator reviewed the footage. SIIRT investigators also interviewed a neighbor who had not been contacted by Spokane Police officers in their canvass. None of the neighbors saw the shooting, but some heard gunshots.

SIIRT's lead investigator interviewed one witness officer on the night of the shooting. Each of the involved officers and the remaining witness officers provided written statements or narratives to SIIRT within one month of the shooting.

Case File Integrity

Only authorized personnel accessed the McCoy case file. During an active investigation, the WAC requires an IIT's case file to be restricted from everyone except for IIT members involved with the investigation. We reviewed access logs for the McCoy investigation and did not find any unauthorized access.

We did not find evidence that any SIIRT members received prohibited information during the investigation. The WAC prohibits IIT members from remaining on an investigation if they receive compelled information that could contaminate the investigation.

Conflicts of Interest

SIIRT did not comply with some requirements to assess potential conflicts of interest between involved officers and IIT members. The WAC requires all involved IIT investigators and community representatives to complete a conflict of interest assessment within 72 hours of starting an investigation. This assessment is supposed to include questions on work and social relationships with the involved officer, as well as potential biases that could affect their objectivity.

All SIIRT investigators completed a conflict of interest assessment on the night of the shooting. SIIRT's assessment asked the investigators if they knew any of the officers being investigated, and if they did, whether they had a work or personal conflict with them. The assessment did not include questions about biases.

The community representatives did not complete conflict of interest assessments. The commander said he did not think it was necessary for the community representatives to complete an assessment because they were not investigating the shooting.

The commander reviewed the investigators' completed conflict of interest assessments within two days of the shooting, but we were unable to determine when the community representatives reviewed them. The representative we interviewed said he thought he reviewed the forms during this investigation, and that SIIRT usually has representatives review the forms within the first couple of days of an investigation. The commander said SIIRT has community representatives review the forms when they first meet in person with the commander. We did not find any documentation in the case file of the review occurring. The commander said SIIRT has added signature lines to its conflict of interest form to document when reviews occur.

None of the investigators reported having any conflicts of interest with any of the involved officers.

RECOMMENDATIONS

We recommend SIIRT:

- Ensure investigators and community representatives complete conflict of interest assessments that include questions related to potential biases and social and work conflicts with the involved officer
- Provide the community representatives and the family of the person who was injured or killed with advance notice of all press releases as required, and maintain documentation to demonstrate that it did so

We also recommend SIIRT's member agencies separate involved officers, give administrative orders to involved and witness officers to not speak about the case before providing statements to SIIRT, and maintain documentation that they did so.

INDEPENDENT INVESTIGATION TEAM RESPONSE



"In partnership with the community -
Dedicated to your safety"

The Honorable Pat McCarthy
State Auditor's Office
PO Box 40021
Olympia, WA 98504

Auditor McCarthy,

This letter is the Spokane Independent Investigative Response Team response relating to the officer involved shooting January 5, 2021, in the City of Spokane. The following recommendations were provided by The Office of the Washington State Auditor:

Include questions in its conflict-of-interest assessments related to bias.

The conflict-of-interest forms are being reviewed to include language regarding social conflicts and biases.

Provide community representatives and McCoy's family with advance notice of all press releases.

We agree with this recommendation and note none of the press releases were released with new or updated information prior to community representatives or McCoy's family being notified. As is common in these lengthy investigations, several weeks passed with no significant changes to the investigation.

Require community representatives to complete conflict of interest assessments.

We plan to include the representatives in the initial completion of conflict-of-interest forms. They are currently signing confidentiality agreements and reviewing the conflict-of-interest forms with the commander.

Maintain documentation demonstrating the community representatives reviewed investigators' conflict of interest assessments and were given the opportunity to review the completed investigation file.

The community representatives review the conflict-of-interest forms with the commander at the initial investigators meeting. We have added a line to the conflict-of-interest form to acknowledge their review with a signature. We have also added a line to the confidentiality agreement stating at the conclusion of the investigation they are afforded the opportunity to review the completed case file.

The Spokane Independent Investigative Response Team appreciates the opportunity to participate in this audit and the professional working relationship with the assigned auditors.

We are pleased the audit confirmed our investigation was thorough, having only minor infractions and no impact on the decisions made by the prosecutor's office.



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APPENDIX A: AUTHORITY, SCOPE, OBJECTIVE AND METHODOLOGY

Authority

In 2018, Washington voters passed Initiative 940, which, in part, required investigations of police use of deadly force be conducted by an agency completely independent of one with the involved officers. It tasked the Washington State Criminal Justice Commission (CJTC) with adopting rules to govern these investigations. In 2019, the CJTC created a workgroup, including stakeholders from community groups and law enforcement agencies, to adopt rules for independent investigations. The rules were outlined in Washington Administrative Code (WAC) 139-12-030 and took effect in January 2020.

The rules were designed to help ensure investigations are independent, transparent, credible and communicated timely to the public and affected people. The rules define the elements of an independent investigation, and explain the duties of the involved agency and independent investigation team (IIT) after police use deadly force that results in death, substantial bodily harm or great bodily harm. In 2021, the Legislature amended state law (RCW 43.101.460) to require our Office audit investigations into police use of deadly force to ensure compliance with the new rules.

Scope

This audit assessed whether the Spokane Police Department and the Spokane Independent Investigative Response Team (SIIRT) complied with state laws and rules regarding the investigation of the use of deadly force that resulted in the death of Shawn McCoy. It reviewed whether the law enforcement agencies met the criteria for independent investigations as outlined in WAC 139-12-030.

By law, the audit only reviewed the investigation. It did not review the use of deadly force incident nor assess whether the use of force was justified.

Objective

This audit examined whether the Spokane Police Department and SIIRT complied with state laws and rules regarding independent investigations of police use of deadly force.

Methodology

To determine whether the Spokane Police Department and SIIRT complied with state laws and rules regarding independent investigations of police use of deadly force, we reviewed investigative files related to the case and interviewed IIT members. We interviewed IIT members to understand their investigative process and how they documented their procedures and findings. We also spoke to the IIT's community representative to confirm whether they were involved in required processes of the investigation. In the case files, we searched for evidence demonstrating the IIT followed the legal requirements. We also reviewed training records from the CJTC and member police agencies.

APPENDIX B: WAC 139-12-030 COMPLIANCE SUMMARY

Independence

Requirement	Compliant?
The involved agency and/or other first responders will provide or facilitate first aid at the scene if necessary.	Yes
The involved agency will relinquish control of the scene.	Yes
The involved agency will not participate in the investigation.	Yes
Any specialized equipment belonging to the involved agency will be approved by the community representatives and the independent investigation team (IIT) commander before it is used in the investigation.	Not applicable
Information shared by the IIT to the involved agency will be limited to briefings about the progress of the investigation.	Yes
The IIT commander will honor requests from the involved agency to release body cam video or other investigation information of urgent public interest.	Not applicable

Transparency

Requirement	Compliant?
A minimum of two non-law enforcement community representatives will be assigned to the IIT.	Yes
The community representatives will:	
<ul style="list-style-type: none"> Review conflict of interest statements submitted within 72 hours of the commencement of each investigation 	Unable to determine
<ul style="list-style-type: none"> Be present at the briefings with the chief or sheriff of the involved agency(ies) 	Yes
<ul style="list-style-type: none"> Have access to the investigation file when it is completed 	Unable to determine
<ul style="list-style-type: none"> Be provided a copy of all press releases and communication sent to the media prior to release 	No
<ul style="list-style-type: none"> Review notification of equipment use of the involved agency 	Not applicable
The community representatives will sign a confidentiality agreement at the beginning of the investigation.	Yes
The IIT will provide public updates about the investigation at a minimum of once per week, even if there is no new progress to report.	Yes
When an independent investigation is complete, the information will be made available to the public in a manner consistent with applicable state law.	Yes

Communication

Requirement	Compliant?
A family member of the person against whom deadly force has been used will be notified of the incident as soon as possible.	Yes
The IIT will assign a family liaison within the first 24 hours of the investigation.	Yes
The family liaison will keep the family informed about all significant developments in the investigation.	Yes
The family liaison will give the family advanced notice of all scheduled press releases.	No
Neither the involved agency nor the IIT will provide the media with criminal background information of the person against whom deadly force has been used, unless it is specifically requested, and release of the information is required by the Public Records Act or other applicable laws.	Yes
The involved agency will notify the Governor's Office of Indian Affairs (GOIA) in accordance with RCW 10.114.021 if the person against whom deadly force is used is a member of a federally recognized tribe.	Not applicable
A member of the IIT will be assigned as a tribal liaison within the first 24 hours and keep the tribe (or a representative of the tribe's choice) informed about all significant developments of the investigation.	Not applicable

Credibility

Requirement	Compliant?
The involved agency and other first responders will secure the incident scene and maintain its integrity until the IIT arrives.	Yes
The involved agency and other first responders will locate and preserve evanescent evidence.	Yes
The IIT will follow these accepted best practices for homicide investigations published and annually updated by the Washington State Criminal Justice Training Center (CJTC):	
<ul style="list-style-type: none"> Until all statements have been taken, involved and witness officers shall not discuss the case with any other witnesses. 	Unable to determine
<ul style="list-style-type: none"> The involved agency or first responders will separate involved officer(s) and remove them from the immediate scene. 	No
<ul style="list-style-type: none"> The IIT will obtain statements from subjects and witnesses. Audio and/or video recording is preferred and should be attempted. 	Yes
<ul style="list-style-type: none"> Interviews of involved officers should follow the policies of their individual agency, collective bargaining agreement and case law. 	Not applicable
<ul style="list-style-type: none"> Interviews with emergency medical personnel, fire department personnel, and first responding officers should address conditions at the incident scene. 	Yes
<ul style="list-style-type: none"> The IIT will canvass the immediate area for potential witnesses who have not come forward and obtain information or statements as available. 	Yes
<ul style="list-style-type: none"> In the event of death, consult with the coroner or medical examiner at the scene and at, or subsequent to, the autopsy. A member of the IIT must attend the autopsy and take all appropriate investigative steps, consistent with other criminal investigations. 	Yes
<ul style="list-style-type: none"> Until the case file is delivered to the prosecutor, access to the IIT case file should be restricted to the IIT members involved. 	Yes
If any member of the IIT receives prohibited information, the investigator receiving the prohibited information must immediately report it to their supervisor and the member must discontinue participation in the investigation.	Not applicable
Within 72 hours of the start of each investigation, investigators and community representatives must complete a “conflict of interest” assessment tool regarding any connection to the officers being investigated that assesses work and social conflicts and biases.	No
The IIT commander will review the conflict of interest assessment within 72 hours of the start of the investigation.	Yes
The community representatives and the IIT commander will discuss the conflict of interest assessments.	Not applicable

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